[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag.C.J.

February 3, 1939

DAWOODSHAH & CO.....Appellants

vs.

JOSEPH GLAS & ORS.....Respondents

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 2 of 1938]

Rule Committee (Supreme Court) Enactment, 1932, Rule No. 4 Sub-rules Nos. 8, 57 and 71—basis of taxation of costs of Magistrate's Court Appeals—practice on appeal against taxation.*

The appeal from the decision of the Magistrate having been dismissed with costs, the solicitors for the respondents carried in for taxation a fully itemised bill. The amount involved in the case was nearly $1,000 and had been tried by the Magistrate, Kuala Lipis, under the extended jurisdiction provisions, (Courts Enactment, Section 57 (ii) (b)). The hearing of the appeal occupied nearly two days. The Registrar, on taxation, stated that he had made it a rule to follow the old practice of allowing a lump sum of $150 as the ordinary maximum which should be allowed for costs upon an appeal from a Magistrate, but that, in this case, he was prepared to increase it owing to the sum involved and the time occupied on the hearing. He taxed the bill as a whole at $275 and disbursements. The Bill as filed amounted to $721 and disbursements. The respondents, without carrying in any objections, appealed directly to the Judge under 1932 Rule No. 4 sub-rule 71, by notice without stating any grounds of appeal. The appeal was heard in Chambers.

Held, that the procedure by way of appeal adopted in this case was correct as the appeal involved a question of principle but that notice of appeal should clearly specify the questions of principle to be raised on appeal.

Held further, that the Registrar had rightly exercised his discretion under the Rule Committee (Supreme Court) Enactment, 1932, Rule No. 4 Sub-rule 57.

APPEAL to the Judge in Chambers.

Ramani for the Respondents.

1932 Rule No. 4 Sub-rule 8 is mandatory and an itemised bill should be filed and must be taxed item by item according to the scale. The Registrar has a discretion under particular items to allow more or less. He has no discretion to ignore the bill altogether and assess a lump sum. The $150/- rule having been superseded by the present Rule is no longer available for application. No such special provision in the present Rule. The amount allowed is in any case, inadequate, having regard to the work involved. But for the special jurisdiction in particular magistrates this matter would have originated in the Supreme Court. To lay down even a rule of practice that $150/- should ordinarily be the limit of costs for appeals from a Magistrate is wrong in principle and is opposed to the present rule.

Briggs for the Appellants: On a preliminary point:

The right to appeal to the Judge without previous review by the Registrar is peculiar to this country. It must be confined to matters of principle and the notice of appeal should state the grounds of appeal. It is an irregularity not to do so. On the merits—There is provision in the present Rule by which a Registrar can assess a lump sum. The words "from any other cause" in Sub-rule 57 are not to be read *ejusdem generis* with the matters preceding them. *Re Commonwealth Oil Corporation*, (1917) 1 Ch. 404. The lack of any special scale of costs for dealing with Magistrates' Court Appeals, which are matters involving small sums not ordinarily dealt with in the Supreme Court, is a good reason for applying sub-rule 57. Although it would be wrong to apply an absolute maximum of $150/-, this is, in fact, fair remuneration in an ordinary appeal, and the Registrar is entitled to work on it as a standard. Here, he has allowed amply for the only points which could be taken into consideration as increasing that sum, and has increased it accordingly. The Registrar's discretion has been exercised and should not be interfered with.

Ramani in reply.

TERRELL, AG. C.J.—I think that under Sub-rule 71 only questions of principle can be raised on an appeal to the Judge without previous review by the Registrar. I also think that, for the assistance of the Court and to prevent embarrassment, the questions of principle which will be raised on the appeal should be set out in the notice of appeal and, if, in another case, this were not done, I might refuse to hear it, until the necessary particulars had been given. This matter has, however, been argued, and the point raised is one proper to be raised by this procedure. I am accordingly prepared to decide it. The old rule by which costs of Magistrate's Court Appeals were limited to $150/- was one which might work hardship in special cases, and it was no doubt for this reason that it was changed; but this does not indicate that a sum of $150/- is inadequate in ordinary appeals. I think that the Registrar, as taxing officer, has jurisdiction to exercise his discretion under Sub-rule 57, and to assess costs at a gross sum. In an ordinary appeal, I should not be prepared to say that his discretion was exercised wrongly if he allowed the sum of $150/-. This was not quite an ordinary appeal, in that the amount involved and the time occupied, were both larger than usual. The Registrar has made allowance for these two factors, and has, in his discretion, allowed nearly double the amount which he would have allowed for an ordinary appeal. I think he has exercised his discretion upon a proper basis and I am not prepared to interfere. The appeal will be dismissed with costs.

Appeal dismissed with costs

[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

March 3, 1939

GURUVAMMAH (f)....Appellant (Defendant)

vs.

RAMASAMY.....Respondent (Plaintiff)

[N. S. MAGISTRATE'S CIVIL APPEAL No. 5 of 1938]

Labour Code (Cap. 154) S.82, S.85—Res judicata—Master and servant—claim for wages due — enquiry by Assistant Controller — subsequent action in Magistrate's Court.

*See now chapter 13.